

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 MUR 6032) CASE CLOSURE UNDER THE
 TOM LEATHERWOOD FOR CONGRESS) ENFORCEMENT PRIORITY SYSTEM
 AND CHRIS THOMAS AS TREASURER)
)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 6032 as a low-rated matter. In this case, the complainant, Randy Bratton, alleges that the Tom Leatherwood for Congress Committee and Chris Thomas, in his official capacity as treasurer ("Committee"), violated various disclaimer provisions. Specifically, the complainant alleges that the Committee aired television advertisements without including a written disclaimer that stated who paid for the ads and whether they were authorized by the candidate. Additionally, the complaint asserts that the candidate failed to include an oral disclaimer ("stand by your ad") in its television ad, which should have stated the candidate's name and his approval of the message. Furthermore, the complainant alleges that the Committee failed to include written disclaimers on certain yard signs it had distributed. Finally, the complainant alleges that the Committee failed to report expenditures for website related expenses.

29044234425

1 In response, the candidate argued that the FEC-mandated disclaimer provisions,
2 which require a four second appearance of a candidate on camera, were not required.
3 According to the candidate, the "stand by your ad" provision is required only when the
4 "Lowest Unit Charge" ("LUC") is in effect, pursuant to 47 U.S.C. § 315(b). Specifically,
5 the LUC provision allows candidates discounted rates on advertising and applies to the 45-
6 day period prior to a federal primary election. In this matter the Committee's ads were run
7 outside of the 45-day period. The Committee had in fact negotiated advertising rates based
8 on market conditions, and did not receive the LUC. Moreover, the ads did not mention
9 another candidate for the same office by name, as required under the LUC provisions and,
10 thus, the provisions were inapplicable to the candidate's ad.

11 The candidate acknowledged that the Committee's yard signs initially failed to
12 include the required written disclaimer, but the Committee realized its mistake,
13 acknowledged the mistake publicly, and created disclaimer stickers to attach to the signs
14 before they were distributed. Finally, the candidate stated that no funds were used for
15 initially developing the Committee website, and that the website did not go "live" until after
16 the April, 2008 reporting deadline. After the website went live, the Committee paid for the
17 website and reported its expenditures on in its July 2008 Quarterly Report.

18 The candidate did not specifically address how the LUC provisions under Title 47 of
19 the United States Code effect the "stand by your ad" requirements under 2 U.S.C. § 441d.
20 On the other hand, the Committee appeared to substantially comply with the other disclaimer
21 requirements suggested in the complaint. Therefore, in furtherance of the Commission's
22 priorities and resources, relative to other matters pending on the Enforcement docket, the
23 Office of General Counsel believes that the Commission should exercise its prosecutorial

29044234426

discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). This Office also recommends that the candidate be cautioned that his failure to include an oral statement in his television advertisement potentially violated the disclaimer provisions under 2 U.S.C. § 441d and 11 C.F.R. § 110.11.

RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss MUR 6032, send a cautionary notification to Tom Leatherwood, close the file, and approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

3/9/07
Date

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration